

Appln. No. 09/506,434
Amendment and Response to Office Action dated April 2, 2007
June 15, 2007

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REMARKS

Applicants hereby file this Response pursuant to 37 C.F.R. § 1.111(a) in response to the Office Action mailed on April 2, 2007. Claims 15, 17, 21, 55-58, 64, 65 and 68-76 are pending. Claims 15, 21 and 55 have been amended. No new matter has been added by way of these amendments. Applicants note that the Office Action reflects that claim 16 is currently pending. However, claim 16 was withdrawn December 31, 2001.

Claims 15, 17, 21, 55-58, 64 and 65 have been rejected under 35 U.S.C. § 112, first paragraph. *See* Office Action at ¶ 6. Claims 15, 21 and 55 have been rejected under 35 U.S.C. § 112, second paragraph. *See* Office Action at ¶ 8. Claims 15, 21 and 55 have been rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over USPN 6,464,134 to Page ("Page"). *See* Office Action at ¶ 10 (page 5). Claims 17, 56-58, 64 and 65 have been rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Page in view of Official Notice. *See* Office Action at ¶ 9 (page 7).¹

I. Objections to the Claims.

In the Final Rejection dated September 22, 2006, the Examiner objected to claims 15, 21 and 55 on the basis of informalities. *See* Final Rejection at ¶ 3. Applicants amended claims 15, 21 and 55 in accordance with these objections. Applicants thank the Examiner for withdrawing these objections.

II. Rejections under 35 U.S.C. § 112.

A. Rejections under 35 U.S.C. § 112, first paragraph.

The Examiner has rejected claims 15, 17, 21, 55-58, 64, 65 and 68-76 under 35 U.S.C. § 112, first paragraph for allegedly failing to comply with the enablement requirement. *See* Office Action at ¶ 6. Applicants respectfully submit that the Specification discloses this limitation in a manner that enables one of ordinary skill in the art to make and use the invention without undue

¹ Applicants note that there are two paragraphs 9, one on p. 5 and one on p. 7. The rejection of claims 17, 56-58, 64 and 65 over Page in view of Official Notice is found in the paragraph 9 on p. 7 of the Office Action.

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experimentation. Applicants further respectfully submit that the Examiner has not met her burden in “establish[ing] a reasonable basis to question the enablement provided for the claimed invention.” See MPEP § 2164.04, citing *In re Wright*, 999 F.2d 1557, 1562, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993) (“examiner must provide a reasonable explanation as to why the scope of protection provided by a claim is not adequately enabled by the disclosure”). The MPEP specifically states that “[a] specification disclosure which contains a teaching of the manner and process of making and using an invention in terms which correspond in scope to those used in describing and defining the subject matter sought to be patented *must be taken as being in compliance with the enablement requirement of 35 U.S.C. 112, first paragraph, unless there is a reason to doubt the objective truth of the statements contained therein which must be relied on for enabling support.*” *Id.* (emphasis added). The MPEP states that language of an enablement rejection make “specific findings of fact, supported by the evidence, and then drawing conclusions based on these findings of fact.” *Id.* The MPEP continues: “For example, doubt may arise about enablement because information is missing about one or more essential parts or relationships between parts which one skilled in the art could not develop without undue experimentation. In such a case, the examiner should specifically identify what information is missing and why one skilled in the art could not supply the information without undue experimentation.” *Id.*

Here, the Examiner has provided no specific findings of fact, based on any evidence, with conclusions drawn on these findings of fact that would support a finding that one skilled in the art could not perform the claimed methods of depositing the value of conventional checks without physical receipt of the conventional check based on the disclosure in the Specification. First, the Examiner alleges that “[i]t is unclear in the Specification that the ACH and automated banking system do not receive the physical check because, according to the Specification on page 10, lines 4–10, the check does go through a clearing process.” *Id.* Applicants respectfully submit that there are *no* reasons whatsoever provided in this statement that would support a finding that one skilled in the art could not perform the claimed methods of depositing the value of conventional checks without physical receipt of the conventional check based on the disclosure in the Specification. As an initial matter, Applicants submit that the Examiner has not

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met her initial burden in making this rejection and this rejection should be withdrawn for this reason alone.

However, this application has been pending since February 18, 2000 and Applicants do not want to delay prosecution. Accordingly, Applicants have provided support in the Specification for enablement of the inventions of claims 15, 21 and 55.

The Examiner's statement that it is not clear in the Specification that the ACH and automated banking system do not receive the physical check respectfully is incorrect. The section of the Specification that is cited by the Examiner in support of this statement discloses two possible "check clearing processes" of the invention:

In the case of the reconstructed check 370, the check clearing process 375 is the traditional method for physically routing the paper check to the paying bank for payment. In an EFT or ECP transaction, the check clearing process may be accomplished by automated systems. The BOFD may submit the electronic transactions individually, or in batch. The check clearing process may involve data transfer directly to a local paying bank, or it may involve transfer of data to a clearing house or Federal Reserve bank for ultimate credit by the paying bank.

The "check clearing process" for clearing the deposit transactions of the inventions of claims 15, 21 and 55, as disclosed in this cited section of the Specification, accordingly depends on the method decided upon by the bank of first deposit ("BOFD") for clearing the deposit of the value of the third party check through another bank. *See* Specification at p. 9, lines 17-18. The Specification discloses that the deposit transaction of claims 15, 21 and 55 (*i.e.*, the deposit of a conventional check that has been made payable to the bank customer) may be converted to an EFT, an ECP or a reconstructed check for purposes of "clearing" the conventional check through another bank 345. *Id.* at p. 9, line 18 to p. 10, line 2. Where the "clearing" process is accomplished by the printing of a reconstructed check, it is the *reconstructed check* that is physically routed to the paying bank for payment - *not* the conventional check itself. This cited paragraph thus expressly states that check clearing in the case of conversion of the transaction to a reconstructed check is accomplished by physical routing of the *reconstructed check*, *without* physical receipt of the conventional check.

This cited paragraph also discloses that "check clearing" in the instances of an EFT or an ECP "may be accomplished by automated systems . . . [t]he check clearing process 375 may

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involve *data transfer* directly to a local paying bank, or it may involve transfer of *data* to a clearing house or Federal Reserve bank for ultimate credit by the paying bank.” *Id.* at p. 10, lines 8-10. This cited paragraph thus expressly states that check clearing in the case of conversion of the transaction to an EFT or ECP is accomplished by *data transfer*, *without* physical receipt of the conventional check.

The Examiner also states in support of this rejection that “[t]his process is like the copy of the scanned paper checks that I receive from my bank each month with my bank statement. The deposit of the check amount is an electronic deposit without involving a paper check except for a scanned copy of the paper check and a mark or watermark. This is the reason for the 35 U.S.C. 112, first paragraph rejection being maintained.” Office Action at ¶ 6. Applicants respectfully submit that these statements likewise do not meet the Examiner’s burden in making an enablement rejection. These statements provide no findings of fact based on evidence or conclusions based on those findings to support *why* the Examiner doubts the truth or accuracy of the statements made in the Specification regarding check clearing for deposit transactions of the invention, or why one skilled in the art could not perform the claimed methods of depositing the value of conventional checks without physical receipt of the conventional check based on the disclosure in the Specification. *See* MPEP § 2164.04.

Accordingly, Applicants respectfully submit that this rejection should be withdrawn because (1) Applicants have provided six different citations in the Specification which provide enablement for the claimed inventions that the **value** of a physical check is deposited **without receipt of the physical check by the BOFD**; and (2) the Examiner has not met the initial burden of establishing a reasonable basis to question the enablement provided for the claimed invention (*See* MPEP § 2164.04 (“In order to make a rejection, the examiner has the initial burden to establish a reasonable basis to question the enablement provided for the claimed invention,” *citing In re Wright*, 999 F.2d 1557, 1562, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993) (examiner must provide a reasonable explanation as to why the scope of protection provided by a claim is not adequately enabled by the disclosure))).

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B. Rejections under 35 U.S.C. § 112, second paragraph.

i. Clauses of intended use in claims 15, 21 and 55.

Claims 15, 21 and 55 have been rejected under 35 U.S.C. § 112, second paragraph for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. *See* Office Action at ¶ 8. Specifically, claims 15, 21 and 55 have been rejected as allegedly containing the following clauses of intended use in the independent claims: “wherein the bank customer payee is the recipient of a conventional check payable to the bank customer payee” and “wherein the transaction data comprises routing number, account number, date written and amount of the conventional check.” *Id.* Applicants have amended claims 15, 21 and 55 with regard to these limitations and respectfully request that this rejection be withdrawn.

ii. Essential information not included in claims 15, 21 and 55.

Claims 15, 21 and 55 have also been rejected under 35 U.S.C. § 112, second paragraph because “the specification discusses the customer being prompted to supply information which a complete set of data may comprise customer identification, customer account number, name of payor, name and routing number of payor’s bank, the amount of the check, and image of the check, and other information.” *See* Office Action at ¶ 8. The Examiner states that “the claim only recites ‘transaction data comprises routing number, account number, date written and amount of the conventional check’ in 15(b).” *Id.* According to the Examiner, the MPEP states in sec. 2172.01 that “. . . a claim which fails to interrelate elements as defined by applicant(s) in the specification may be rejected under 35 USC 112, second paragraph, for failure to point out and distinctly claim the invention.” *Id.* The Examiner concludes that “[t]he claim limitation should recite ‘customer identification, customer account number, name of payor, name and routing number of payor’s bank, the amount of the check, and image of the check’ or ‘customer identification, customer account number, name of payor, name and routing number of payor’s bank, the amount of the check, and image of the paper check.’” *Id.*

Applicants respectfully disagree with the Examiner that these limitations must be included in claims 15, 21 and 55 in order to satisfy 35 U.S.C. § 112, second paragraph. As an initial matter, Applicants point out that MPEP § 2172.01 does not read as stated in the Office

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Action. Rather, MPEP§ 2172.01 states that "a claim which fails to interrelate *essential* elements of the invention as defined by the applicant(s) in the specification may be rejected under 35 U.S.C. § 112, second paragraph, for failure to point out and distinctly claim the invention." (emphasis added). Applicants respectfully submit that the items referenced by the Examiner - customer identification, customer account number, name of payor, name and routing number of payor's bank, the amount of the check, and image of the check, and other information - are *not* disclosed as essential elements of the invention. Essential matter is elements, steps or necessary structural cooperative relationships of elements described by the applicant(s) as necessary to practice the invention. Here, the Specification at p. 8, lines 6-12 provides this referenced list of items merely as examples of information that a bank customer may be prompted to enter into a customer terminal in connection with the deposit transaction. In fact, this list of information is prefaced with the recital that "A complete set of data *may* comprise . . ." (emphasis added). Applicants therefore respectfully submit that the list of information cited by the Examiner - customer identification, customer account number, name of payor, name and routing number of payor's bank, the amount of the check, and image of the check - is not a list of essential information that must all be included in claims 15, 21 and 55, and respectfully request that this rejection be withdrawn.

iii. Preamble of claims 15, 21 and 55.

Finally, the Examiner has rejected claims 15, 21 and 55 on the grounds that recitations in the preamble are allegedly not positive recitations. *See* Office Action at ¶ 8. Although Applicants do not believe this is grounds for rejection, the preambles of each of claims 15, 21 and 55 have been amended. Applicants respectfully request that this rejection be withdrawn.

III. Rejections Under 35 U.S.C. § 103(a).

Previously, claims 15, 17 and 55 were rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over to Zeanah in view of Gustin, Josephson and Geer. *See* Final Rejection at ¶ 7. Claims 21, 56-58, 64, 65 and 68-76 were rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Josephson and Gustin in view of Geer. *See* Final Rejection at ¶ 9. These rejections have not been maintained and Applicants thank the Examiner for withdrawing these rejections.

Claims 15, 21 and 55 have been rejected as allegedly unpatentable under 35 U.S.C. §

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103(a) over USPN 6,464,134 to Page ("Page"). See Office Action at ¶ 10 (page 5). Claims 17, 56-58, 64 and 65 have been rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Page in view of Official Notice. See Office Action at ¶ 9 (page 7). Applicants respectfully submit that these references, alone or in combination, do not support a *prima facie* case of obviousness and should be withdrawn.

A. Rejection of claims 15, 21 and 55 over Page.

Claims 15, 21 and 55 have been rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Page. See Office Action at ¶ 10. The Examiner states with respect to claim 15 that "Page discloses, A computerized method for allowing a bank customer to deposit the value of conventional checks into a bank account from a location that is remotely situated with respect to a bank comprising (a) logging a bank customer payee onto an automated banking system through a customer terminal that is remotely situated with respect to a bank and the automated banking system, wherein the bank customer payee is the recipient of a conventional check payable to the bank customer payee (col. 3, line 47 - col. 4, line 4 and col. 6, lines 7-38 - See Summary of the Invention). Customer terminals are located in shopping malls, grocery stores, gas stations and on-line banking which are remotely located from the bank. It is well known that a customer has to logon to a banking system to conduct any type of transaction. In this case, cashing or depositing a conventional check made to the bank customer. Page further discloses, (b) receiving transaction data that was entered into the customer terminal by the bank customer payee, wherein the transaction data comprises routing number, account number, date written and amount of the conventional check (col. 3, lines 30-47 and col. 6, line 52 - col. 7, line 23 - See Summary of the Invention), (c) processing the discrete value of the conventional check for deposit by the automated banking system without physical receipt of the conventional check by the automated banking system (col. 4, lines 13-65, col. 8, lines 4-40 and line 64 - col. 9, line 19 - See Summary of the Invention) and (e) receiving by the bank customer a result of the transaction for the conventional check (col. 5, lines 23-51 and col. 9, line 20 - col. 10, line 22 - See Summary of the Invention)." Office Action at ¶ 10. Claims 21 and 55 have been rejected for similar rationale. *Id.*

Applicants respectfully submit that this rejection should be withdrawn for failure to

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support a *prima facie* case of obviousness because Page does not disclose each and every limitation of claims 15, 21 or 55. Specifically, Page does not disclose that the discrete value of the conventional check can be deposited without physical receipt of the conventional check by the automated banking system. The Examiner cites to Page at col. 4, lines 13-65, col. 8, lines 4-40 and line 64 - col. 9, line 19 - See Summary of the Invention as allegedly disclosing these limitations.

Page discloses a "system and method for verifying the authenticity of a bank check and authorizing payment of the bank check at any of a plurality of banks or check cashing agencies." Abstract. According to Page, "a payor or issuer of a check integrates account data normally pre-printed on the face of the check with individualized payee data . . . which is communicated to a processing center for temporary storage." *Id.* Page further discloses that "[u]pon presentation of the check for deposit or cashing, the bank or check cashing agency will establish a second set of data based on the pre-printed account data and individualized payee data that appears on the face of the check presented." *Id.* (emphasis added). The second set of data are communicated to the processing center, and the two sets of data are compared. *See id.* A positive comparison of at least the payee identification and value of the check means that the information is verified and the check is authorized for payment. *See id.* Thus, Page expressly discloses that the check is presented for deposit or cashing at a bank or check cashing agency. Accordingly, Page does not disclose a system or method whereby the discrete value of the check can be deposited *without* physical receipt of the check by the automated banking system.

The cited sections of Page by the Examiner further demonstrate that Page does not disclose this limitation of claims 15, 21 and 55. For example, col. 4, lines 13-65 discloses the following:

At least one of a preferably large number of "cashing terminals" is preferably located at a number of different banks, check cashing agencies and other establishments, including retail establishments, *where the bank check may be presented for redemption.* The cashing terminal also preferably includes sufficient input facilities to establish what may be referred to as a second set of data. The second set of data is more specifically defined by both the account data as well as individualized payee data, which appears on the face of the check being presented for redemption. Using the cashing terminal, *personnel to whom the bank check was presented for redemption*, would enter the account data,

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preferably by optically scanning or otherwise electronically reading the pre-printed account data appearing on the bank check. In addition, at least a portion of the individualized payee data would also be entered, preferably manually through the use of a keyboard, keypad or like facilities, wherein the customized payee data entered would include at least the dollar amount or value appearing on the face of the check. Accordingly, once the account data, and at least a portion of the customized payee data, is integrated into the cashing terminal, thereby establishing the aforementioned second set of data, the second set of data would be communicated to the processing center. Once received by the processing center, a central processing unit or other processing facilities, remote or integral with the cashing terminal and/or issuing terminal would perform a comparison process between the content of the first set of data received from the issuing terminal and the content of the second set data received from the cashing terminal. A positive comparison would comprise the content of both the first and second sets of data being identical, in that the account data as well as at least the value of the check and possibly the identification of the payee *appearing on the face of the check presented for redemption*, would identically correspond to the same information which defines the first set of data supplied to the processing center by the issuing terminal. To the contrary, a negative comparison would result when, for example, the individualized payee data *appearing on the face of the check presented for redemption* has a value greater than or different from the value of that check supplied by the issuing terminal and initially stored in the processing center prior to comparison. The computer or processing facilities at the processing center would then generate either a verification signal or non-verification signal, which would be communicated directly to the cashing terminal. Upon receipt of a verification signal, personnel at the site of the cashing terminal *would be authorized to redeem the check in terms of allowing its deposit, or exchanging it for cash*. However, the receipt of a non-verification signal would prevent authorized redemption of the presented check and require further processing either by the processing center or the personnel at the site where the cashing terminal is located

(emphasis added). The emphasized portions of this cited section specifically disclose that the check in Page is presented for redemption. Accordingly, this section does not disclose the third limitation of claim 15 that the discrete value of the conventional check is deposited without physical receipt by the automated banking system.

Col. 8, lines 4-40 discloses the following:

Naturally, the issuing terminal 10 could also be accessed to obtain and/or transmit such information, which would be communicated to the issuing terminal 14 for storage, upon completion of each check verification or non-verification by virtue of the existence of the network communication link 28. Likewise, in such an

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embodiment, the information on the check could include routing information wherein the cashing terminal 14 communicates directly with the issuing terminal 10, the processing center being directly associated therewith, with each issuing terminal defining its own processing center.

The cashing terminal 14 also preferably includes sufficient processing and/or storage facilities to adequately process, in the manner intended, the various data input from a second input facility, including a scanner assembly 34 and/or a manually actuatable keyboard 36. The scanner assembly 34 may be similar to scanner assembly 18, in that it may be in the form of an optical scanner, electronic reader and/or "swipe" scanner designed and structured to identify or read the pre-printed account data *appearing on the face of the check, which is presented for redemption at the cashing site*, such as the bank, check cashing agency, etc. as set forth above. The scanner assembly 34 located at each of the plurality of cashing terminals 14 could also be structured to electronically scan or read the payee data appearing on the check. The keypad or keyboard 36 may be connected for manually inputting all or at least a portion of the individualized payee data, *which appears on the front of each of the bank checks presented for redemption* in situations where the payee data is not scanned or electronically read. The cashing terminal 14 and more specifically the processing facilities associated therewith, would therefore integrate the scanned account data, as well as the individualized payee data, electronically or manually input into the terminal 14. The integration of the account data and the individualize payee data would therefore represent and establish what may be termed a second set of data.

(emphasis added). The emphasized portions of this cited section specifically disclose that the check in Page is presented for redemption. Accordingly, this section does not disclose the third limitation of claim 15 that the discrete value of the conventional check is deposited without physical receipt by the automated banking system.

Col. 8, line 64 - col. 9, line 19 discloses the following

More specifically, in the preparation of a bank check, *personnel at the issuing site*, where the issuing terminal 10 is located, first inputs the account data appearing in pre-printed form on the face of the bank check being prepared as at 40, by optically scanning or otherwise electronically reading such account information utilizing the scanning assembly 18, as set forth above. The individualized payee data, including at least the dollar amount and name or identification of the payee, is added as at 42 to the processor of the issuing terminal 10, using the first input facility, such as the keyboard 20. However, if the payee data has been previously printed on the bank check, automatically, using conventional computer facilities or like equipment, such individualized payee data may also be electronically scanned using any of a number scanning assembly 18,

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structurally modified to electronically read both the account data as well as the payee data. The account data and the individualized payee data are then integrated into the storage and/or memory facility as at 44, so as to establish what may be referred to as a first set of data. This first set of data is then communicated as at 46 to the processing center 12, wherein the CPU 24 thereof receives the first set of data as at 48 and at least temporarily stores such data for later access, as at 50.

(emphasis added). This cited portion of Page discloses the entry of the first set of data *at the issuing site*. The actions disclosed in this paragraph are not taken by the bank customer at all, but rather by the payor of the check. Accordingly, this section does not disclose the third limitation of claim 15 that the discrete value of the conventional check is deposited without physical receipt by the automated banking system.

Applicants cannot locate any place in the Summary of the Invention of Page that discloses a system or method for depositing the discrete value of a check without physical receipt of the check by the automated banking system. Applicants respectfully request the Examiner identify specifically the portions of the Summary of the Invention of Page so that Applicants can prepare a response.

Page does not disclose each and every limitation of claims 15, 21 or 55, and specifically does not disclose a system or method for depositing the discrete value of a check without physical receipt of the check by the automated banking system. In fact, Page discloses that the check of its system and method is presented for deposit or cashing at a bank or check cashing facility. Accordingly, the check of Page *is* physically received. Applicants respectfully submit that Page does not support a *prima facie* case of obviousness of claims 15, 21 and 55 and that this rejection should be withdrawn.

B. Rejection of claims 17, 56-58, 64 and 65 over Page in view of Official Notice.

Claims 17, 56-58, 64 and 65 have been rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Page in view of Official Notice. *See* Office Action at ¶ 9 (page 7). The Examiner has taken Official Notice with respect to claims 17 and 58 that a provisional credit to a bank customer's account is a well known accounting procedure. *See id.* The Examiner has also take Official Notice with respect to claim 56 that a scanner is capable of converting machine printed characters to electronic text format when a document is scanned, and contain optical recognition software for conversion of printed characters into electronic text. *See id.* The

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Examiner states with respect to claim 57, 68, 71 and 74 that Page discloses entering transaction data into the customer terminal comprises scanning the checks using the digital image scanner. *See id.* The Examiner states with respect to claim 64 that Page discloses subjecting conventional checks to one or more actions to prevent redeposit of the check. *See id.* The Examiner states with respect to claim 65 that Page discloses that the one or more actions comprise marking each check by human or readable ink, physical capture of each check or combinations. The Examiner states with respect to claims 69, 73 and 75 that Page discloses that the digital image scanner comprises optical recognition software to convert machine printed characters to electronic text. *See id.* Finally, the Examiner states with respect to claims 70, 72 and 76 that Page discloses that the digital image scanner comprises intelligent character recognition software to convert handwritten characters to electronic text. *See id.*

Applicants disagree with several of these statements. For example, with respect to claim 65, the cited section of Page (col. 8, line 64 - col. 9, line 19) discloses actions taken by the *issuer* of the check. If the actions cited by the Examiner were taken by the *issuer* of the check, the payee would not later be able to present the check to the bank or check cashing agency for deposit or cashing. Further, Applicants note that Page does not disclose each and every limitation of claims 15, 21 and 55, from which these dependent claims depend. Accordingly, Page does not disclose each and every limitation of these claims, either. Applicants therefore respectfully submit that these rejections should be withdrawn for failure to support a *prima facie* case of obviousness.

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CONCLUSION

Applicants respectfully submit that claims 15, 17, 21, 55-58, 64, 65 and 68-76 are in condition for allowance and request allowance of the same.

This Response has been filed within three months of the mailing date of the Office Action and Applicants believe that no fees are due upon filing this paper. If any fees are determined to be due, the Commissioner is hereby authorized to deduct such fees from the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS LLP

Dated: June 15, 2007

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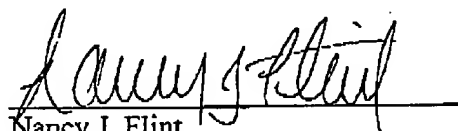
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